

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 11, 2001
at 9:30 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJ 39, 4/9/2001

HEARING ON HJ 39

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: REP. CHRIS HARRIS, HD 30, BOZEMAN

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, explained the resolution as a sentencing study of interim committee and it would be done every session of the legislature. He mentioned the problem with the current databases and the Department of Corrections, Department of Justice and Department of Public Health and Human Services. He referred to page two of the resolution and asked the committee to remove the inconsistent sentence.

Proponents' Testimony:

REP. CHRIS HARRIS, HD 30, BOZEMAN, strongly supports this resolution and felt it made sense. He asked for the language dealing with unconstitutional be struck out.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, encouraged the committee to pass the resolution and amend the language as suggested.

EXECUTIVE ACTION ON HJ 39

Discussion:

SEN. MIKE HALLIGAN wanted to amend the resolution and strike the inconsistent or unconstitutional offenses or related material. He asked if was only the unconstitutional portion to be struck out. **REP. SHOCKLEY** preferred the entire amendment taken out. **REP. HARRIS** felt the offensive language to be unconstitutional.

CHAIRMAN GROSFIELD thought inconsistent sentences should be apart of the study. **REP. SHOCKLEY** agreed with the changes and how they should be apart of the study. **REP. HARRIS** explained related material. He thought procedures were related to material and they accompany the sentences.

CHAIRMAN GROSFIELD wondered if it would say inconsistent sentences or sentencing procedures. **SEN. RIC HOLDEN** felt the committee should make the amendment to strike all of the language so the bill would read as originally written.

SEN. HALLIGAN said if the language of obsolete, inconsistent sentences or related procedures were kept, it would be fine.

Motion: SEN. HOLDEN moved HJ 39 TO STRIKE LANGUAGE "INCONSISTENT OR UNCONSTITUTIONAL OFFENSES SENTENCES OR RELATED MATERIAL IN THE" ON PAGE 2 BE AMENDED.

Substitute Motion: SEN. O'NEIL made a substitute motion to change language on LINE 4 TO READ; "OBSOLETE OR INCONSISTENT SENTENCES, OR RELATED MATERIAL IN THE STATUTES EXIST,".

Discussion:

CHAIRMAN GROSFIELD asked if the language of material or procedures should be included. SEN. JERRY O'NEIL thought material would be inclusive enough to relate to procedures.

Valencia Lane, Legislative Staff, clarified the substitute motion.

SEN. HALLIGAN said material could be inclusive to procedures, but material in the legal sense wouldn't relate or fit as well. SEN. O'NEIL agreed and said to add the language of procedures instead of material.

Valencia Lane read the sentence and language changes for clarification.

Vote: Substitute motion carried unanimously.

Substitute Motion: SEN. O'NEIL made a substitute motion ADDING LANGUAGE TO AMEND LINE 11 AFTER THE WORD SENTENCES AND ADD "AND PUNISHMENTS" TO AMEND.

Discussion:

SEN. DUANE GRIMES asked what the difference of punishment versus sentences was. SEN. O'NEIL explained the use of punishment.

SEN. GRIMES asked if this language would fall under sentences. SEN. O'NEIL felt it would make it more inclusive.

SEN. GRIMES said they could add sentences or conditions. Valencia Lane said the proposed amendment would be redundant. She explained sentences encompassing all condition of sentences.

SEN. O'NEIL talked about a debate, which detours people from doing certain things. He explained situations of punishment and felt by adding this language it would assist the resolution.

Vote: Motion failed 1-7 with SEN. O'NEIL voting aye.

Motion/Vote: SEN. GRIMES moved HJ 39 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

Miscellaneous Discussion

CHAIRMAN GROSFIELD mentioned the possibility of writing a letter to the Law, Justice and Indian Affairs Interim Committee regarding the pepper spray issue.

SEN. HOLDEN felt the committee should not write any letter. He referred to the hearing and said the issues were not appropriate.

SEN. HALLIGAN said he visited with **Steve Gibson, Director, Pine Hills**, and mentioned Amnesty International had been contacted to investigate the matter. He thought the Law, Justice and Indian Affairs Interim Committee would have the ability to listen to the presentation and dispel any concerns to the protocol and use of pepper spray.

CHAIRMAN GROSFIELD added the bill was only heard with this committee as a Senate bill.

SEN. GRIMES thought by using the Law, Justice and Indian Affairs Interim Committee another body or committee should review this issue. He did not think this would be proper form to deal with and was convinced this issue was not a problem.

SEN. GERALD PEASE said his concerns were with the use of pepper spray entirely. He didn't think the officers should use pepper spray on the children at Pine Hills.

Motion/Vote: SEN. HOLDEN moved to Table the idea of a Letter. TO LAW, JUSTICE & INDIAN AFFAIRS INTERIM COMMITTEE RE: PEPPER SPRAY ISSUE. Motion failed 4-4 - tie vote. SEN. DOHERTY was absent during vote.

CHAIRMAN GROSFIELD thought if this issue was brought up again it would go to the Law, Justice and Indian Affairs Committee.

Motion: SEN. HALLIGAN moved to Pass a Letter. TO LAW, JUSTICE & INDIAN AFFAIRS INTERIM COMMITTEE ASKING FOR A REPORT BY DEPARTMENT OF CORRECTIONS OR A REPRESENTATIVE ON THE USE OF PEPPER SPRAY IN THE FACILITIES.

Discussion:

SEN. HOLDEN said when this is brought before a committee it is begging for legislation. He thought the children in Pine Hills

were strong, big and healthy and could defend themselves. He felt the pepper spray should be used defensively by the officers.

SEN. O'NEIL asked if the letter could include the results of physical abuse or any other evidence between the guards and these children may have incurred. He said if pepper spray was not used, the officers may have used a baton on the children or would have had to hit them.

SEN. HALLIGAN thought a general understanding was needed of what is going on with the pepper spray in the facilities.

Vote: Motion Carried 5-3 with SEN. BISHOP, SEN. HOLDEN, and SEN. O'NEIL voting no.

Miscellaneous Discussion

SEN. HALLIGAN mentioned county attorneys, who are unable to work on child abuse and neglect cases. He said these cases needed more assistance to work on to file. He visited with **Mike McGrath, MT. Attorney General**, and he is willing to order the county attorneys to have responsibility to work on these cases. This committee could request the attorney general's opinion to work on these cases and it might be helpful to the attorney general.

{Tape 1; Side B}

Motion: SEN. HALLIGAN moved To Pass a REQUEST SEN. BECK TO ASK FOR ATTORNEY GENERAL'S DECISION IF IT IS THE RESPONSIBILITY FOR THE COUNTY ATTORNEY'S TO FILE CHILD ABUSE AND NEGLECT CASES - CIVIL CASES.

Discussion:

SEN. GRIMES thought this procedure would make sense.

CHAIRMAN GROSFIELD said this could be drafted by the committee's legislative staffer to **SEN. TOM BECK** to be sent on to the attorney general.

Vote: MOTION TO REQUEST DO PASS carried unanimously.

ADJOURNMENT

Adjournment: 10:05 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus82aad)